IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3072 of 2005

Between:

Ch.Narender S/o.Ramanaiah,
H.No.2-8-461, Srinagar Colony,
N.G.O's Road, Hanamakonda, Wangal Dt.

..... PETITIONER

AND

1 The Kakatiya Grameena Bank, Head office at
H.No.2/739/1-3, 1st floor,
Old Bus Depot, Road Ramnagar, Hanamakonda

rep.by its Chairman.
2 The Kakatiya Grameena Bank,

Head office at H.No.2/739/1-3, 1st floor,
Old Bus Depot Road, Ramnagar, Hanamakonda
rep.by its Administrative officer.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus; 1. Declaring the action of the respondent authorities in not selecting the petitioner for interview for promotion to the post of officer scale-I as arbitrary, illegal, violative of Art. 14, 16, 21 and 300-A of the Constitution of India and consequently direct the respondent authorities to consider the petitioner for promotion to the post of scale-I officer by conducting interview and be pleased to pass such other order or orders as the Hon'ble court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.A.SUDERSHAN REDDY

Counsel for the Respondents: MR.K.SRINIVASAMURTHY

The Court, at the admission stage, made the following :

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3072 of 2005

ORDER:

This writ petition has been filed to declare the action of the respondent authorities in not selecting the petitioner to attend interview for promotion to the post of Officer Scale-I as arbitrary and illegal.

2. The petitioner's case is that he has been working as Clerk-cum-Cashier in the respondent-Bank. Respondent-Bank issued Staff Circular No.19, dated 07-10-2004 with regard to the promotion of clerk-cum-cashier to Officer Scale-I. Thereafter, respondent-Bank conducted written test on 21-11-2004 for effecting Internal Promotions. The petitioner is at Sl.No.6 in the list of eligible candidates dated 10-11-2004 for attending the written examination. Respondent-Bank has, on all earlier occasions, selected the candidates on the basis of only seniority, since the written test and the oral interviews were formal in nature and the promotion was on the basis of seniority-cum-merit but not merit-cum-seniority basis. But, respondent-Bank considered the promotion of juniors ignoring the petitioner's seniority even though he has qualified for the written test. Hence, the present writ petition.

3. The learned counsel for the petitioner contended that since it is a case of promotion to the Officer Scale-I on the basis of seniority-cum-merit, all the persons who are eligible shall have to be called for the interview. Therefore, the petitioner may be permitted to appear for the interview.

4. On the other hand, the learned standing counsel appearing for the respondent-bank contended that the petitioner has not qualified in the written test and that the candidates who have secured a minimum of 40% marks in each subject were only called for the interview. Therefore, the petitioner since having not been qualified in the written examination, he is not eligible to be called for the interview.

5. The learned counsel for the petitioner placed reliance on the decision reported in ***B.V.SIVAIAH v. K.ADDANKI BABU***, wherein it was held that:

" While applying the principle of seniority-cum-merit for the

> purpose of promotion what is required to be considered is *inter se* seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion on the basis of seniority-cum-merit seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service."

6 . In the aforementioned decision, the Circular did not prescribe minimum qualifying marks for the assessment of performance and merit, on the basis of which, an employee_should be considered for being selected as pointed out by this Court. The selection was made only with the candidates, those who secured highest number of marks amongst the eligible candidates.

7. But, in this case, a minimum qualifying mark has been prescribed as per Staff Circular No.19, dated 07-10-2004 wherein, it is clearly stated that "a list of only those candidates who secure a Minimum of 40% marks in English, Banking Law, Practice and Procedures shall be prepared. Out of the successful candidates from the written test, the Bank prepares the list of candidates in the order of seniority to the extent two hundred percent (i.e., 1:2) of the vacancies i.e., 14 candidates for interview as the vacancies for promotion are 07."

8. When the minimum qualifying mark is prescribed in the Circular Order dated 07-10-2004 and since the said Circular Order is not being challenged in this writ petition, there cannot be issued any mandamus directing the respondent to act as contrary to the said Circular Order.

9. Therefore, if the contention of the learned counsel for the petitioner is accepted, then there is no need for the respondent-Bank to conduct any written examination and all the persons, who qualified, are required to appear before the interview, but, that is not purport of the Staff Circular dated 07-10-2004 where under one has to secure a minimum of 40% marks each in English, Banking law, Practice and Procedure, and after they secure minimum qualifying mark, then only the seniority-cum-merit should be come into force.

But, in this case since the petitioner has not secured the minimum qualifying marks, he cannot be permitted to attend the interview.

10. In the result, the writ petition is devoid of merit and is accordingly dismissed. No costs.

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February 28, 2005

Kvr

To

1 The Chairman. Kakatiya Grameena Bank, Head office at H.No.2/739/1-3, 1st floor,
Old Bus Depot, Road Ramnagar, Hanamakonda

2 The Administrative officer. Kakatiya Grameena Bank,

Head office at H.No.2/739/1-3, 1st floor,
Old Bus Depot Road, Ramnagar, Hanamakonda

3 Two C.D copies.